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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,096	02/19/2004	Wei Chen	U 015037-6	3538

140 7590 09/07/2005

LADAS & PARRY  
26 WEST 61ST STREET  
NEW YORK, NY 10023

EXAMINER

BROWN, JENNINE M

ART UNIT	PAPER NUMBER
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1755

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/783,096

Applicant(s)

CHEN ET AL.

Examiner

Jennine M. Brown

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1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-27 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

***Priority***

Acknowledgment is made of applicant's claim for foreign priority certified copies of CN 03105214.2 (02/24/2003) or CN 03153662.X (08/20/2003) have been received.

***Claim Objections***

Applicants amendment obviates the previous objections, therefore the objections have been withdrawn.

***Claim Rejections - 35 USC § 112***

Applicants amendment obviates the previous rejections, therefore the rejections have been withdrawn.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spencer, et al. (US 6172173 B1) in view of Morini, et al. (US 5723400).

See entire document. Spencer, et al. disclose a silica support for catalysts having an average pore size of less than 10 microns (col. 4, l. 14-38). Spencer, et al. disclose a method of making a supported catalyst using said support with a titanium compound (col. 4, l. 39-col. 5, l. 60; col. 9, l. 23-36). Methods of polymerization of ethylene/ $\alpha$ -olefin copolymers for narrow molecular weight spherules and thin cast films (col. 5, l. 61-col. 6, l. 32). The magnesium compound is a alkyl or alkoxy magnesium compounds are disclosed as well as the use of alkyl halides (col. 8, l. 48-col. 9, l. 21). An aluminum cocatalyst/activator is also disclosed (col. 11, l. 22-56).

Spencer, et al. do not specifically disclose halogenation of the magnesium compound with a chlorinating agent or the use of an electron donor compound such as a 1,3-diether. Morini, et al. disclose a method of making a solid catalyst component for olefin polymerization comprising contacting a magnesium halide with a titanium compound and a 1,3-diether compound, specifically 9,9-bis(methoxymethyl)-4-tertbutylfluorene (col. 1, l. 42-col. 2, l. 27; col. 17, l. 40-col. 19, l. 21). It would have been obvious to one of ordinary skill in the art to modify the catalyst composition of Spencer, et al. to use the activated magnesium halide composition and use the 1,3-diether compound of Morini, et al. because these the activated magnesium halide and the 1,3-diether exhibit high activity and stereospecificity in the polymerization of olefins.

***Response to Arguments***

Applicant's arguments filed 6/27/2005 have been fully considered but they are not persuasive.

Although applicant's arguments suggest that the composite carrier and catalyst component are different based on the process used to make them, no substantive showing of said difference has been definitively exemplified between applicant's composite carrier or catalyst component and the prior art previously cited. Each of the components are present in the prior art and rationale for the combination of references has previously been stated.

The composition is a product by process and considered an obvious variation. According to the MPEP, "The Patent Office bears a lesser burden of proof in making out a case of prima facie obviousness for product-by-process claims because of their peculiar nature than when a product is claimed in the conventional fashion. In re Fessmann, 489 F.2d 742, 744, 180 USPQ 324, 326 (CCPA 1974). Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. In re Marosi, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983) (The claims were directed to a zeolite manufactured by mixing together various inorganic materials in solution and heating the resultant gel to form a crystalline metal silicate essentially free of alkali metal. The prior

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art described a process of making a zeolite which, after ion exchange to remove alkali metal, appeared to be essentially free of alkali metal." The court upheld the rejection because the applicant had not come forward with any evidence that the prior art was not "essentially free of alkali metal" and therefore a different and unobvious product.

Accordingly, applicant's arguments allege patentability due to secondary consideration and comparative examples in the specification but the rejections have been maintained.

New rejections have been given for newly added claims 26 and 27.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennine M. Brown whose telephone number is (571)

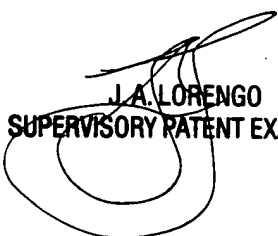
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272-1364. The examiner can normally be reached on M-R 9:30 AM - 7:30 PM; Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on (571) 272-1233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jmb

  
J. A. LORENGO  
SUPERVISORY PATENT EXAMINER